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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,788	07/30/2003	Jean Taylor	0573-1004-1	9395
466 7590 08/19/2008 YOUNG & THOMPSON 209 Madison Street Suite 500 ALEXANDRIA, VA 22314			EXAMINER PHILOGENE, PEDRO	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 08/19/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/629,788

Applicant(s)

TAYLOR ET AL.

Examiner

Pedro Philogene

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 16-20, 22-24 and 26-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-13, 16-20, 23, 24 and 26-30 is/are allowed.
- 6) ☒ Claim(s) 14, 22, 31-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14, 22, 31-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernhardt et al. (5,591,166) in view of Rhinevailt (2,190,585) in view of Harms et al. (4,946,458) in view of Schmudde et al. (5,851,082).

With respect to claims 14, 31 Bernhardt et al disclose a spinal osteosynthesis device comprising at least two bone anchoring elements (20) for anchoring in respective bodies of the bone structure of the spine, at least one member (62) for longitudinal connecting the bone anchoring elements ad shakles (64,68) for connecting the bone anchoring elements together, each bone anchoring element comprises a head (36) a threaded shank (28) extending the head and a tightening element (70) which can be fitted onto this shank, the threaded shank has a ball end (22) for articulation in a housing (44) of a spherical cup (46) of the head (36), the ball ad the cup have respective center of rotations which are separated by a distance; as best seen in FIGs.3,4, giving the device a function of returning the bone anchoring element by transverse force, the connector shakle for this purpose having a spherical bearing surface, as best seen in FIG.2, articulated to a portion of the spherical bearing surface of the cup of the head of the bone anchoring element.

It is noted that Bernhardt et al did not teach of a recess having an interior surface and a ball having an exterior surface defining a wall that tapers as it approaches the opening; as claimed by applicant. However, in a similar art, Rhinevault evidences the use of a ball and socket or recess having wall that tapers as it approaches the opening so that the head may adjust itself into proper contact with the threaded shank.

Therefore, given the teaching of Rhinevault, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Bernhardt et al, as taught by Rhinevault et al, so that the head may adjust itself into proper contact with the threaded shank.

It is noted that the above combination of references did not teach of a head shaped so as to allow grasping with a screwing tool and wherein the interior surface is continuous throughout an entirety of the recess, as claimed by applicant. However, in similar art, Hams et al provide the evidence, FIG.1 at 5, of the use of a head shaped (5 hexagonal shape) so as to allow grasping of a screw tool, wherein the interior surface (8) is continuous throughout an entirety of the recess, to form a socket, and so that suitable torque may be employed to drive the shaft.

Therefore, given the teaching of Harms et al. it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Bernhardt et al/Rhinevault, as taught by Harms et al, to form a socket, and so that suitable torque may be employed to drive the shaft.

With respect to claims 22, 32-35 Bernhardt et al disclose all the limitations, as set forth in column 3, lines 35-67, column 4, lines 1-67, column 5, lines 1-30, and as best

seen in FIGS.1-7; also as best seen in FIG.2,3 of Rhinevault, and as best seen in FIG.1, of Harms et al.

Schmudde et al teach a head (1) having a hemispherical exterior surface; and wherein the interior surface and the exterior surface; as best seen in the FIG.1, are continuous on a periphery of the recess, the interior and exterior surfaces extending beyond the periphery on a side opposite a bottom of the recess so as to define a continuous wall therebetween, the wall protruding on the side opposite a bottom of the recess; as best seen in FIG.1, the wall extending around the ball and in an immediate vicinity of the ball, the ball terminating in a free edge defining the opening having a diameter that is less than a diameter of the ball, the bottom of the recess lying on one side of an equator of the ball, a part of the ball around which the free edge extends lying on an opposite side of the equator of the ball; such that any alignment errors and surface inaccuracies are compensated and the parts can be joined with each other stress-free.

Therefore, given the teaching of Schmudde et al, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Bernhardt et al; as taught by Schmudde et al, so that any alignments errors and surface inaccuracies are compensated and the parts can be joined with each other stress-free.

Allowable Subject Matter

Claims 1-13, 16-20, 23, 24, 26-30 are allowed.

Response to Amendment

Applicant's arguments filed 5/23/08 have been fully considered but they are not persuasive. In response to applicant's argument based upon the age of the references, contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977). Furthermore, the reference, to Schmudde et al, teaches the added limitations to claims 14 and 31.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-

4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Pedro Philogene/
Primary Examiner, Art Unit 3733
August 15, 2008